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**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

CURTIS SAUNDERS, individually and  
on behalf of classes of similarly situated  
individuals,

Plaintiff,

v.

SUNRUN, INC., a Delaware corporation,  
Defendant.

) Case No. 3:19-cv-4548  
)  
)  
) **CLASS ACTION COMPLAINT**  
) **FOR DAMAGES AND**  
) **INJUNCTIVE RELIEF**  
)  
) 1) Violation of 47 U.S.C. §  
) 227  
) 2) Violation of Cal. Penal  
) Code § 632.7  
)  
) **DEMAND FOR JURY TRIAL**  
)  
)

1 Plaintiff Curtis Saunders (“Plaintiff”) individually and on behalf of all others  
2 similarly situated, brings this class action complaint against Defendant Sunrun, Inc.  
3 (“Sunrun” or “Defendant”), to stop Defendant’s practice of sending unauthorized  
4 text message advertisements to consumers’ cellular telephones and recording sales  
5 calls without obtaining proper advance consent, and to obtain redress for those  
6 harmed by Defendant’s misconduct. Plaintiff alleges as follows based on personal  
7 knowledge as to himself and as to his own acts and experiences, and as to all other  
8 matters, on information and belief, including an investigation conducted by his  
9 attorneys.

#### 10 NATURE OF THE CASE

11 1. Defendant is a national retailer and servicer of residential solar power  
12 systems.

13 2. In a misguided attempt to promote solar power products and services,  
14 Defendant engaged in an unlawful form of marketing: sending unauthorized  
15 automated text message advertisements to consumers’ cellphones.

16 3. By making these automated text message calls without consumers’  
17 consent, Defendant has violated the Telephone Consumer Protection Act (the  
18 “TCPA”), 47 U.S.C. § 227 *et seq.*, as well as consumers’ privacy rights.

19 4. The TCPA and its implementing regulations, 47 C.F.R. § 64.1200 *et*  
20 *seq.*, specifically prohibit companies such as Defendant from sending unauthorized  
21 solicitations to consumers through automated text message calls without their  
22 consent.

23 5. Defendant’s conduct has thus caused actual, concrete harm to Plaintiff  
24 and other consumers, not only because they were subjected to the aggravation and  
25 invasion of privacy that necessarily accompanies unauthorized automated text  
26 message advertisements, but also because consumers like Plaintiff frequently have  
27 to pay their cellphone service providers for the receipt of such text messages, even  
28 though the messages were sent without authorization and in violation of federal law.



1        13. This Court has personal jurisdiction over the Defendant because  
2 Defendant does and is registered to do business in California and nationwide,  
3 Defendant maintains its headquarters in California, and certain acts giving rise to the  
4 claims alleged herein were committed in California and this District.

5        14. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) because  
6 Defendant's headquarters are in this district and because a substantial part of the  
7 events concerning the conduct at issue occurred in this District, as the unauthorized  
8 text message advertisements at issue originated in this District and Defendant  
9 recorded the phone calls at issue in this District.

#### 10 11                    **INTRADISTRICT ASSIGNMENT**

12        15. The conduct giving rise to the claim in this matter originated in the  
13 County of San Francisco. Under Local Rule 3-2(c), this civil action should be  
14 assigned to the San Francisco Division of the Northern District of California.

#### 15 16                    **COMMON ALLEGATIONS OF FACT**

17        16. Many companies now employ a host of automated technologies in their  
18 communications with potential customers when promoting their products and  
19 services.

20        17. Among those technologies are recording systems that record any phone  
21 calls with customers for future reference, marketing data, and/or quality control.  
22 More recently, many companies have also turned to automated text message calls to  
23 directly communicate with customers over their cellular telephones.

24        18. Unauthorized text messages, much like surreptitious recording of  
25 phone conversations without consent of all parties involved, invoke fundamental  
26 privacy concerns, which state and federal laws have sought to regulate and protect.

27        19. Specifically, automated text message calls, and particularly  
28 unauthorized automated text message advertisements, are unlike more conventional

1 advertisements, because they are sent directly to the recipient's personal cellphone,  
2 creating an annoying and aggravating interruption that is distracting, wastes the  
3 recipient's time, and invades the recipient's privacy.

4 20. Moreover, in contrast to regular forms of advertising that are paid for  
5 solely by the advertiser, text message calls can actually cost their recipients money,  
6 because cellphone users like Plaintiff have to pay their respective wireless service  
7 providers either for each text message call they receive, incur a usage allocation  
8 deduction to their text messaging plan, or pay a fixed or variable usage fee regardless  
9 of whether or not the message was authorized.

10 21. Accordingly, Congress enacted the TCPA to prevent unsolicited  
11 advertising calls to consumers' cellphones. "Voluminous consumer complaints  
12 about abuses of telephone technology – for example, computerized calls dispatched  
13 to private homes – prompted Congress to pass the TCPA." *Mims v. Arrow Fin.*  
14 *Servs., LLC*, 132 S. Ct. 740, 744 (2012).

15 22. The TCPA's ban on unsolicited automated calls has been interpreted to  
16 extend to automated text messages sent to cellular telephones.

17 23. Similarly, California has recognized consumers' rights to privacy when  
18 engaging in telephone conversations and enacted Cal. Pen. Code § 632.7 to ensure  
19 that companies such as Defendant are not able to record conversations without  
20 properly disclosing at the outset of the call that the call is being recorded.

## 21 22 **ALLEGATIONS SPECIFIC TO PLAINTIFF**

23 24. Defendant sells residential solar-power systems throughout the United  
24 States.

25 25. As part of its sales process, when Defendant receives a customer  
26 contact inquiring about its solar products, Defendant contacts the customer to follow  
27 up and attempt to sell its solar products and services by live voice call placed by its  
28 call agents.

1           26. The sales calls placed by Defendant are automatically recorded from  
2 the moment that the call connects to a customer.

3           27. During these recorded calls, Defendant sends automated text messages  
4 to the customer's cell phone about its products and services and asking for  
5 information to proceed with the sales process.

6           28. However, Defendant fails to always make sure that it has proper  
7 consent to send such automated telemarketing text messages to the potential  
8 customer.

9           29. For example, in October 2018, Defendant placed a call to Plaintiff's  
10 cell phone to follow up on his attempt to get a quote about Defendant's solar products  
11 and services.

12           30. The call placed by Defendant was automatically recorded by Defendant  
13 from the outset of the call.

14           31. However, during the recorded call placed by Defendant, Defendant's  
15 call agent failed to inform Plaintiff from the outset of the call that the call was being  
16 recorded and obtain his consent before proceeding with the call.

17           32. Furthermore, during the recorded call, Defendant's call agent asked  
18 Plaintiff whether he agreed to receive further automated calls and text messages from  
19 Sunrun.

20           33. Plaintiff responded by specifically informing Defendant that he did not  
21 consent to receive any text message communications from Defendant. Indeed,  
22 Defendant's call agent acknowledged Plaintiff's statement and that he should not be  
23 receiving any text message communications from Defendant.

34. However, much to Plaintiff's surprise and dismay, shortly thereafter Plaintiff received the two automated and generic text messages shown below that solicited further information from Plaintiff to move forward with the sales process:

Thanks for your interest in Sunrun! Next step: Please send over your electric bills. We'll use this history to estimate your solar savings.

To share your utility usage and bill history with Sunrun, please follow the below link:  
<https://mysunrun.com/#/share-energy-usage?opptyId=0060d00001sLk8HAAS&email=curtiss@nedco.com&zipCode=89128&providerId=1662>

35. Defendant sent the generic telemarketing text messages received by Plaintiff through the use of an automatic telephone dialing system.

36. When a call is placed to the (855) 478-6786 phone number from which the text messages originated, a prerecorded message automatically plays informing the caller that they have reached "Sunrun."

37. The text messages referenced above were unauthorized and sent without Plaintiff's consent in violation of the TCPA.

38. The unauthorized text messages Plaintiff received caused actual, concrete injuries, not only because the messages were sent in violation of the TCPA, but also because they invaded Plaintiff's privacy and interfered with his unrestricted use of his cellphone.

**CLASS ACTION ALLEGATIONS**

39. Plaintiff brings this action pursuant to Rules 23(b)(2) and 23(b)(3) of the Federal Rules of Civil Procedure on behalf of himself and two classes defined as follows:

**The Text Message Class:** All persons in the United States and its Territories who, within the last four years, received one or more telemarketing text messages from Defendant on their cellular telephone after communicating to Defendant that it did not have consent to send text messages to that telephone number.

**The Recorded Call Class:** All persons in the United States and its Territories who, within one year prior to the filing of this Complaint, received a phone call from Defendant on their cellular telephone regarding the sale of its products or services and which was recorded without their consent being obtained at the outset of the call.

40. Expressly excluded from the Classes are any members of the judiciary assigned to preside over this matter; any officer, director, or employee of Defendant, and any immediate family members of such officers, directors, or employees.

41. Upon information and belief, the Classes contain hundreds, if not thousands, of members such that joinder of all members is impracticable.

42. Plaintiff will fairly and adequately represent and protect the interests of the other members of the Classes. Plaintiff has retained counsel with substantial experience in prosecuting complex litigation and class actions. Plaintiff and his counsel are committed to vigorously prosecuting this action on behalf of the other members of the Classes, and have the financial resources to do so. Neither Plaintiff nor his counsel has any interest adverse to those of the other members of the Classes.

43. Plaintiff's claims are typical of the claims of the other members of the Classes in that the factual and legal bases of Defendant's liability to Plaintiff and to the other members of the Classes are the same. Plaintiff and the other members of

1 the Classes have all suffered harm and damages as a result of Defendant's unlawful  
2 and wrongful conduct.

3 44. There are many questions of law and fact common to the claims of  
4 Plaintiff and the other members of the Recorded Call Class, and those questions  
5 predominate over any questions that may affect individual members of the Recorded  
6 Call Class. Common questions for the Recorded Call Class include, but are not  
7 limited to, the following:

8 (a) Whether Defendant placed one or more calls to the cellular telephones  
9 of members of the Recorded Call Class;

10 (b) Whether Defendant recorded the calls it placed to the members of the  
11 Recorded Call Class;

12 (c) Whether Defendant obtained consent at the outset of the call when it  
13 called the members of the Recorded Call Class; and

14 (d) Whether Defendant should be enjoined from engaging in such conduct  
15 in the future.

16 45. There are also many questions of law and fact common to the claims of  
17 Plaintiff and the other members of the Text Message Class, and those questions  
18 predominate over any questions that may affect individual members of the Text  
19 Message Class. Common questions for the Text Message Class include, but are not  
20 limited to, the following:

21 (a) Whether Defendant sent one or more telemarketing text messages to  
22 members of the Text Message Class;

23 (b) Whether Defendant systematically continued to transmit automated  
24 telemarketing text messages to individuals who communicated to Defendant that  
25 they did not consent to receive such text messages from Defendant;

26 (c) Whether Defendant used an automatic telephone dialing system to  
27 transmit the unauthorized text messages at issue;

28 (d) Whether Defendant's conduct violated Plaintiff's and the Text Message

1 Class members' respective rights to privacy;

2 (e) Whether Defendant's conduct was willfully in violation of the TCPA  
3 such that the members of the Text Message Class are entitled to treble damages;

4 (f) Whether Defendant should be enjoined from engaging in such conduct  
5 in the future.

6 46. Defendant has acted and failed to act on grounds generally applicable  
7 to Plaintiff and the other members of the Classes, requiring the Court's imposition  
8 of uniform relief to ensure compatible standards of conduct toward the members of  
9 the Classes, and making injunctive or corresponding declaratory relief appropriate  
10 for the Class as a whole.

11 47. Absent a class action, most members of the Classes would find the cost  
12 of litigating their claims to be prohibitive and would have no effective remedy. The  
13 class treatment of common questions of law and fact is superior to multiple  
14 individual actions or piecemeal litigation in that it conserves the resources of the  
15 courts and the litigants, and promotes consistency and efficiency of adjudication.

## 16 17 **FIRST CAUSE OF ACTION**

### 18 **Violation of 47 U.S.C. § 227**

#### 19 **(On behalf of Plaintiff and the Text Message Class)**

20 48. Plaintiff incorporates by reference the foregoing allegations as if fully  
21 set forth herein.

22 49. Defendant sent unsolicited and unauthorized telemarketing text  
23 messages using an automatic telephone dialing system to the cellular telephone  
24 numbers of Plaintiff and the other members of the Text Message Class after Plaintiff  
25 and the other members of the Text Message Class communicated to Defendant that  
26 it did not have consent to send such messages.

27 50. These generic, non-personalized text messages calls were automatically  
28 generated using equipment that had the capacity at the time the text messages were

1 sent to store or produce telephone numbers to be called using a random or sequential  
 2 number generator and to automatically dial such numbers without human  
 3 intervention.

4 51. Defendant has, therefore, violated the TCPA, 47 U.S.C. §  
 5 227(b)(1)(A)(iii).

6 52. As a result of Defendant's illegal conduct, Plaintiff and the members of  
 7 the Text Message Class have had their privacy rights violated, have suffered actual  
 8 and statutory damages and, under section 227(b)(3)(B) are each entitled to, *inter*  
 9 *alia*, a minimum of \$500.00 in damages for each such violation of the TCPA.

10 53. To the extent Defendant knew or should have known that it did not have  
 11 Plaintiff's and the Text Message Class members' consent to be sent the  
 12 telemarketing text messages at issue, the Court should, pursuant to section  
 13 227(b)(3)(C), treble the amount for statutory damages recoverable by Plaintiff and  
 14 members of the Class.

## 15 16 SECOND CAUSE OF ACTION

### 17 Violation of California Penal Code § 632.7

#### 18 (On behalf of Plaintiff and the Recorded Call Class)

19 54. Plaintiff incorporates by reference the foregoing allegations as if fully  
 20 set forth herein.

21 55. California Penal Code § 632.7 requires that any party that "intentionally  
 22 records . . . a communication transmitted between . . . a cellular radio telephone and  
 23 a landline" must obtain "the consent of *all* parties to [the] communication"  
 24 (emphasis added).

25 56. Defendant placed telephone calls from its landline telephone number to  
 26 the cellular telephones of Plaintiff and the other members of the Recorded Call Class.



**JURY DEMAND**

Plaintiff requests trial by jury of all claims that can be so tried.

Dated: August 5, 2019

Respectfully submitted,

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